

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

VERNON MERCIER, derivatively
on behalf of MASSEY ENERGY
COMPANY,

Plaintiff,

v.

CIVIL ACTION NO. 2:07-00555

DON L. BLANKENSHIP, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending are the motion to dismiss of defendants Don L. Blankenship, Baxter Phillips, Jr., H. Drexel Short, Jr., J. Christopher Adkins, and Jeffrey M. Jarosinski (Doc. No. 36); the motion to dismiss and motion to exceed page limit of nominal defendant Massey Energy Company and defendants Dan R. Moore, E. Gordon Gee, Richard M. Gabrys, James B. Crawford, Bobby R. Inman, and Robert H. Foglesong (Doc. Nos. 38, 40); and the motion to exceed page limit of plaintiff Vernon Mercier (Doc. No. 61).

With the agreement of the parties, Magistrate Judge Mary E. Stanley suspended and continued the scheduling conference in this action pending a June 25, 2008, final settlement hearing in Manville Personal Injury Trust v. Blankenship, No. 07-C-1333 (Cir. Ct. Kanawha Co.), with the understanding that approval of the settlement in that litigation might preclude plaintiff Vernon Mercier from prosecuting this action. (Doc. No. 69.) On June 30, 2008, the Honorable Irene Berger of the Circuit Court of

Kanawha County entered an Agreed Order and Final Judgment approving the proposed settlement and preserving the objections thereto of plaintiff Mercier.

At a scheduling conference conducted by Magistrate Judge Stanley on July 3, 2008, plaintiff informed the court of his interest in seeking appellate review of the order approving the Manville settlement. The parties agreed that proceedings in this matter may be held in abeyance pending either Mercier's appeal of the settlement order or the expiration of the four-month period in which he may petition for appeal. See R. App. P. W. Va. Sup. Ct. 3.

Accordingly, the court hereby **DENIES** the parties' pending motions to dismiss and to exceed page limits (Doc. Nos. 36, 38, 40, 61) **WITHOUT PREJUDICE** to refile. Plaintiff is **DIRECTED** to inform the court and defendants promptly in writing when he files a petition for appeal, or when the time for doing so elapses. The scheduling conference shall be **HELD IN ABEYANCE** until that time.

The Clerk is directed to send copies of this Memorandum Opinion and Order to Magistrate Judge Mary E. Stanley and to all counsel of record.

It is **SO ORDERED** this 22nd day of July, 2008.

ENTER:

A handwritten signature in black ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber
United States District Judge